Meredith Corporation *and* Screen Actors Guild (SAG)-American Federation of Television and Radio Artists (AFTRA), Kansas City Local. Case 17–CA–077657

May 27, 2015

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS HIROZAWA AND JOHNSON

This is a refusal-to-bargain case in which the Respondent is contesting the Union's certification as bargaining representative in the underlying representation proceeding.[1] Pursuant to a charge filed on March 29, 2012, the Acting General Counsel issued the complaint on April 11, 2012, alleging that Meredith Corporation (the Respondent) has violated Section 8(a)(5) and (1) of the Act by refusing the Union's request to bargain following the Union's certification in Case 17–RC–068104. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g). *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint, and asserting affirmative defenses.

On May 2, 2012, the Acting General Counsel filed a Motion for Summary Judgment. On May 3, 2012, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

On June 14, 2012, the National Labor Relations Board issued a Decision and Order in this proceeding, which is reported at 358 NLRB No. 57. Thereafter, the Respondent filed a petition for review in the United States Court of Appeals for the District of Columbia Circuit, and the General Counsel filed a cross-application for enforcement.

At the time of the Decision and Order, the composition of the Board included two persons whose appointments to the Board had been challenged as constitutionally infirm. On June 26, 2014, the United States Supreme Court issued its decision in *NLRB v. Noel Canning,* 134 S.Ct. 2550 (2014), holding that the challenged appointments to the Board were not valid. Thereafter, the court of appeals vacated the Board's Order and remanded this case for further proceedings consistent with the Supreme Court's decision.

On December 10, 2014, the Board issued a further Decision, Certification of Representative, and Notice to Show Cause in Cases 17–CA–077657 and 17–RC–068104, which is reported at 361 NLRB No. 128. That Decision provided leave to the General Counsel to amend the complaint on or before December 22, 2014, to conform with the current state of the evidence, including whether the Respondent had agreed to recognize and bargain with the Union after the December 10, 2014 certification of representative issued.

On January 22, 2015, the General Counsel filed a motion to amend the complaint, under Section 102.17 of the Board's Rules and Regulations, and on January 26, 2015, the General Counsel and the Respondent filed responses to the Board's December 10, 2014 Notice to Show Cause.

On February 3, 2015, the Board issued an Order Granting Motion to Amend Complaint and Further Notice to Show Cause in which it accepted the amended complaint, and directed that the Respondent file an answer to the amended complaint on or before February 17, 2015, and that cause be shown, in writing, on or before February 24, 2015, as to why the General Counsel's Motion for Summary Judgment should not be granted by the Board. Thereafter, the Respondent filed an answer to the amended complaint, and the General Counsel filed a response to the Board's further Notice to Show Cause.[2]

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

[1] American Federation of Television and Radio Artists, Kansas City Local (AFTRA Kansas City Local) represented a unit of the Respondent's employees employed in the news department. On November 2, 2011, AFTRA Kansas City Local filed the petition in the underlying representation case proceeding seeking a self-determination election among the news producers to determine whether they wished to be included in the existing unit. About March 30, 2012, the American Federation of Television and Radio Artists (AFTRA) merged with the Screen Actors Guild (SAG) to form SAG-AFTRA. Thereafter, AFTRA Kansas City Local affiliated with SAG-AFTRA to form SAG-AFTRA, Kansas City Local. It is undisputed that SAG-AFTRA, Kansas City Local is the successor of AFTRA Kansas City Local. Thus, on all dates before March 30, "the Union" will refer to AFTRA Kansas City Local, and on all dates on or after March 30, "the Union" will refer to SAG-AFTRA, Kansas City Local. The case heading has been corrected to reflect the identity of the bargaining representative.

[2] The amended complaint adds December 10, 2014, as the date the Board certified the Union and alleges that about March 8, 2012, and January 9, 2015, the Union requested that the Respondent recognize and bargain with it as the exclusive collective-bargaining representative of the unit employees, and that about March 19, 2012, and January 15, 2015, the Respondent refused to do so, and continues to refuse to do so. The amended answer admits the factual allegations of the complaint, reiterates the arguments made in the underlying representation proceeding that the Union was not properly certified, and argues that the Board lacked a proper quorum at the time it certified the residual unit to include the news producers at the Respondent's facility, and that it "continues to lack a proper quorum for the processing of this case."

Ruling on Motion for Summary Judgment

The Respondent admits its refusal to bargain, but contests the validity of the certification on the basis that the Board is not properly constituted as required by Section 3(b) of the Act, and thus did not have the authority to issue the certification and does not have the authority to process the instant case. The Respondent offers no argument in support of its assertions that the Board currently lacks a quorum, or that it lacked a quorum on December 10, 2014, when it certified the Union. Accordingly, we reject these arguments as frivolous.

In addition, the Respondent reiterates its argument, which was raised and rejected in the underlying representation proceeding, that the Regional Director erred in ordering a self-determination election in the petitioned-for voting group of news producers, as these individuals are supervisors under Section 2(11) of the Act, and therefore ineligible to vote.

Consequently, all representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

Accordingly, we grant the Motion for Summary Judgment.[3]

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation with an office and a place of business in Fairway, Kansas (the facility), has been engaged in providing broadcasting, publishing, and marketing services. During the 12-month period ending on March 31, 2012, the Respondent, in conducting its business operations described above, has received gross revenues in excess of $1 million and sold and provided goods and services valued in excess of $50,000 directly to customers located outside the State of Kansas. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

We find that at all material times and until about March 30, 2012, American Federation of Television and Radio Artists (AFTRA) Kansas City Local was a labor organization within the meaning of Section 2(5) of the Act, and that since about March 30, 2012, Screen Actors Guild (SAG)-American Federation of Television and Radio Artists (AFTRA), Kansas City Local (SAG-AFTRA, Kansas City Local), has been a labor organization within the meaning of Section 2(5) of the Act.[4]

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following a December 28, 2011 self-determination election, on December 10, 2014, the Board issued a certification of representative certifying that the Union was the exclusive collective-bargaining representative of all news producers employed by the Respondent at its facility and that it is appropriate for the Union to bargain for these employees as part of the group of employees that it represents.

Based on this certification, the following employees of the Respondent constitute a unit appropriate for the purposes of collective-bargaining within the meaning of Section 9(b) of the Act:

> All announcers, anchors, reporters/newscasters, directors, chief directors, news photographers, multi-media journalists, news editors, news producers, and production assistants, Excluding all office clerical employees, salespersons, guards, professional and supervisory employees as defined in the Act, and all other employees.

The Union continues to be the exclusive collective-bargaining representative of the unit employees under Section 9(a) of the Act.

B. Refusal to Bargain

On March 8, 2012, and January 9, 2015, the Union requested in writing that the Respondent bargain with it over terms and conditions of employment that would apply to the news producers. Since about March 19, 2012, and continuing to date, the Respondent has failed and refused to do so. We find that this failure and refusal constitutes an unlawful failure and refusal to recognize

[3] Therefore, the Respondent's motion to dismiss the complaint in its entirety is denied.

[4] As noted in fn. 1, supra, AFTRA Kansas City Local affiliated with SAG-AFTRA to form SAG-AFTRA, Kansas City Local. At all material times, there has been substantial continuity of representation between AFTRA, Kansas City Local and SAG-AFTRA, Kansas City Local. They have common officers, staff representatives, stewards, members, membership, and offices and in the day-to-day administration of collective-bargaining agreements, including the processing of grievances and the services of unit members. Therefore, SAG-AFTRA, Kansas City Local became the successor of AFTRA Kansas City Local and succeeded to its bargaining rights.

and bargain with the Union in violation of Section 8(a)(5) and (1) of the Act.[5]

CONCLUSION OF LAW

By failing and refusing to bargain with the Union as the exclusive collective-bargaining representative of the news producers as part of the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement.[6]

ORDER

The National Labor Relations Board orders that the Respondent, Meredith Corporation, Fairway, Kansas, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with SAG-AFTRA, Kansas City Local as the exclusive collective-bargaining representative of the news producers in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, recognize and bargain with the Union as the exclusive representative of the news producers as part of the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement: The unit is

> All announcers, anchors, reporters/newscasters, directors, chief directors, news photographers, multi-media journalists, news editors, news producers, and production assistants. Excluding all office clerical employees, salespersons, guards, professional and supervisory employees as defined in the Act, and all other employees.

(b) Within 14 days after service by the Region, post at its facility in Fairway, Kansas, copies of the attached notice marked "Appendix."[7] Copies of the notice, on forms provided by the Regional Director for Region 14, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed its facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 19, 2012.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 14 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. May 27, 2015

Mark Gaston Pearce, Chairman

[5] In *Howard Plating Industries*, 230 NLRB 178, 179 (1977), the Board stated:

> Although an employer's obligation to bargain is established as of the date of an election in which a majority of unit employees vote for union representation, the Board has never held that a simple refusal to initiate collective-bargaining negotiations pending final Board resolution of timely filed objections to the election is a *per se* violation of Section 8(a)(5) and (1). There must be additional evidence, drawn from the employer's whole course of conduct, which proves that the refusal was made as part of a bad-faith effort by the employer to avoid its bargaining obligation.

No party has raised this issue, and we find it unnecessary to decide in this case whether the unfair labor practice began on the date of the Respondent's initial refusal to bargain at the request of the Union, or at some point later in time. It is undisputed that the Respondent has continued to refuse to bargain since the Union's certification and we find that continuing refusal to be unlawful. Regardless of the exact date on which Respondent's admitted refusal to bargain became unlawful, the remedy is the same.

[6] The amended complaint and the General Counsel's motion request that the Board require the Respondent to bargain in good faith with the Union as the exclusive representative of the unit for the period set forth in *Mar-Jac Poultry Co*., 136 NLRB 785 (1962). Such a remedy, however, is inappropriate where, as here, the underlying representation proceeding involved a self-determination election. See *White Cap, In*c., 323 NLRB 477, 478 fn. 3 (1997), and cases cited there.

[7] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Kent Y. Hirozawa, Member

Harry I. Johnson, III, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to recognize and bargain with SAG-AFTRA, Kansas City Local as the exclusive collective-bargaining representative of the news producers at our Fairway, Kansas facility.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, on request, recognize and bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our news producers as part of the following bargaining unit:

> All announcers, anchors, reporters/newscasters, directors, chief directors, news photographers, multi-media journalists, news editors, news producers, and production assistants. Excluding all office clerical employees, salespersons, guards, professional and supervisory employees as defined in the Act, and all other employees.

MEREDITH CORPORATION

The Board's decision can be found at www.nlrb.gov/case/17-CA-077657 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273–1940.